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Attorneys for Defendant XO Communications Services, Inc.

IN THE UNITED STATES DISTRICT COURT  
 THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

PACIFIC BELL TELEPHONE COMPANY  
 d/b/a AT&T CALIFORNIA,

Plaintiff,

v.

MICHAEL R. PEEVEY, TIMOTHY ALAN  
 SIMON, MIKE FLORIO, and CATHERINE,  
 J.K. SANDOVAL, IN THEIR OFFICIAL  
 CAPACITIES AS COMMISSIONERS OF THE  
 CALIFORNIA PUBLIC UTILITIES  
 COMMISSION, AND NOT AS  
 INDIVIDUALS, and XO COMMUNICATIONS  
 SERVICES, INC.,

Defendant.

) Case No. CV 11-0970 CRB

) **STIPULATION AND ~~PROPOSED~~**  
 ) **ORDER TO HOLD CASE IN ABEYANCE**  
 ) **AND CONTINUE ALL PENDING**  
 ) **DEADLINES AND INITIAL CASE**  
 ) **MANAGEMENT CONFERENCE**  
 ) **PENDING FURTHER ACTION FROM**  
 ) **THE CALIFORNIA PUBLIC UTILITIES**  
 ) **COMMISSION**

) **[Civil L.R. 6-1(b) and 6-2]**

) **Trial Date: None**

Pursuant to Civil Local Rules 6-1(b) and 6-2 of the United States District Court for the Northern District of California and Standing Order 4 of the Honorable Charles R. Breyer, it is hereby stipulated by and among Plaintiff Pacific Bell Company d/b/a AT&T California ("AT&T") and Defendants, Michael R. Peevey, Timothy Alan Simon, Mike Florio, Catherine J.K. Sandoval, in their official capacities as Commissioners of the California Public Utilities Commission ("CPUC"), and XO Communications Services, Inc. ("XO") (collectively the "Parties"), by and through their respective counsel or record, as follows:

1. This case shall be held in abeyance for a period of 120 days from May 6, 2011 in

1 order to give the CPUC an opportunity to rule on AT&T's Application For Rehearing pending in  
2 the underlying CPUC docket, as described *infra*.

3       2.       The Parties have reason to believe that the CPUC likely will act upon AT&T's  
4 pending request for rehearing of CPUC Decision (D.)10-07-005 within the next ninety (90) days,  
5 possibly as soon as June 23, 2011. Resolution of that rehearing request could alter the posture of  
6 the Parties in this proceeding and benefit the Court and parties in their analysis of the issues in  
7 dispute.

8       3.       In consideration of these developments, the Parties agree that holding this action in  
9 abeyance for a limited period of time is prudent.

10       4.       Pursuant to this stipulated period of abeyance, all of the Parties' respective rights  
11 shall be preserved for the 120 day abeyance period, including but not limited to the right of  
12 defendants CPUC and XO to answer or otherwise respond to AT&T's Complaint.

13       5.       This Stipulation would alter certain preliminary deadlines established by this Court,  
14 including the obligation to meet and confer to discuss preliminary case management and  
15 scheduling issues, as well as the obligation to file a Joint Case Management Statement in advance  
16 of the Case Management Conference currently scheduled for June 24, 2011. For this reason, the  
17 Parties stipulate and request of this Court that all of the following dates and deadlines be extended  
18 as follows:

19               a.       The May 6, 2011 deadline for Defendants CPUC and XO to answer or  
20 otherwise respond to AT&T's Complaint shall be extended to September 6, 2011.

21               b.       The Initial Case Management Conference scheduled for Friday, June 24,  
22 2011 shall be continued to Friday, October 21, 2011 at 8:30 a.m. in Courtroom 8, 19<sup>th</sup> Floor, 450  
23 Golden Gate Avenue, San Francisco, California, or as soon thereafter as is convenient for the  
24 Court.

25               c.       The May 25, 2011 deadline for lead trial counsel to meet and confer in  
26 advance of the Initial Case Management Conference, as required by this Court's March 17, 2011  
27 Order Setting Case Management Conference, shall be continued to September 21, 2011.

28               d.       The June 17 deadline for the Parties to file a Joint Case Management

Statement shall be continued to October 14, 2011.

e. The June 2, 2011 deadline for the Parties to do the following shall be continued to September 30, 2011:

- i. meet and confer re: early settlement, ADR process selection, and discovery plan;
- ii. file ADR Certification signed by Parties and Counsel;
- iii. file either Stipulation to ADR Process or Notices of Need for ADR Phone Conference.

This is the first stipulated time modification in this case, as set forth *supra*. No trial date has been set, so this extension will not require that a trial date be rescheduled, but it will require that the Initial Case Management Conference and related deadlines be rescheduled, as set forth *supra*.

Pursuant to Section X of Northern District of California General Order 45, counsel for Defendant XO attests that it has obtained concurrence in the filing of this document from Mr. David Discher, counsel for Plaintiff AT&T, and Ms. Laura Gasser, counsel for CPUC, on April 27, 2011.

IT IS SO STIPULATED.

DATED this 27<sup>th</sup> day of April 2011. DAVIS WRIGHT TREMAINE LLP

By:                     /s/                      
Joseph E. Addiego III  
Attorneys for Defendant XO Communications  
Services, Inc.  
CALIFORNIA PUBLIC UTILITIES COMMISSION

By:                     /s/                      
Laura Gasser  
Attorneys for Defendant California Public Utilities  
Commissioners Peevey, Simon, Florio, and Sandoval

PACIFIC BELL TELEPHONE COMPANY, d/b/a  
AT&T CALIFORNIA

By:                     /s/                      
David Discher  
Attorneys for Plaintiff Pacific Bell Telephone  
Company, d/b/a AT&T California

**ORDER**

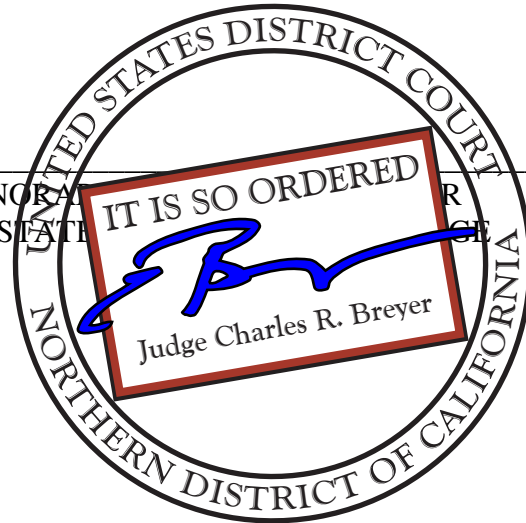
Pursuant to stipulation, the foregoing is approved and IT IS SO ORDERED.

IT IS FURTHER ORDERED that the June 24, 2011, Initial Case Management Conference shall be rescheduled to October 21, 2011, at 8:30 a.m. in Courtroom 8, 19<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, California.

IT IS SO ORDERED.

DATED: April \_\_26\_\_, 2011.

THE HONORABLE  
UNITED STATES JUDGE



DAVIS WRIGHT TREMAINE LLP